

The University of Chicago

THE NATURE OF DEMOTIC LAND LEASES

A PART OF A DISSERTATION SUBMITTED TO
THE FACULTY OF THE DIVISION OF THE
HUMANITIES IN CANDIDACY FOR THE
DEGREE OF DOCTOR OF PHILOSOPHY

DEPARTMENT OF ORIENTAL LANGUAGES AND LITERATURES

1939

By

GEORGE ROBERT HUGHES

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THE NATURE OF DEMOTIC LAND LEASES

A basic problem of legal procedure and contractual adequacy confronts one in a study of the demotic land leases.¹ That problem arises from the fact that the written leases, like all demotic contracts, are unilateral in form--that is, are addressed in the first person by one party to the other,² but that the transaction itself is actually bilateral, involving, unlike the demotic sale, loan, mortgage and marriage, obligations on the part of both contracting parties. This unilaterality of form as against bilaterality in fact is markedly accentuated when it is observed that there are seven available demotic leases which were signed by party A, the party who presumably initiated the transaction, at whose direction and in whose words the contract was written.

Two of the leases subscribed by the addressor party, the lessor in each case, date from years sixteen and seventeen of Amasis' reign, Louvre E. 7844³ and Louvre E. 7845 A.⁴ Whereas the subscription of a party, in addition to the signatures of the scribe and the witnesses, is not wholly unusual in pre-Ptolemaic

¹The material here presented is drawn from my doctoral dissertation: G. R. Hughes, "Saite Demotic Land Leases" (Unpublished Ph.D. dissertation, Department of Oriental Languages and Literatures, University of Chicago, 1939).

²That is, after the date and the preface, "A has said to B," the body of the contract is in the words of "A."

³E. Revillout, Notice des papyrus démotiques archaïques (Paris, 1896), p. 358, No. 54. Party A did not sign for one of the witnesses as Revillout understood. The name of the witness, misread by Revillout, his father's name and the date are a separate line. Through the kindness of M. Jacques Vandier and by permission of the Louvre, a photograph of the papyrus appears in my unpublished dissertation as Pl. II.

⁴Revillout, *op. cit.*, pp. 358 f., No. 55. The signature of party A is in "abnormal hieratic" writing, but the text of the lease is in demotic. No witnesses signed this lease. By courtesy of M. Vandier and the Louvre, a photograph of this document also appears in my dissertation as Pl. III.

contracts, it is quite uncommon in Ptolemaic times,¹ and yet there are five Ptolemaic land leases signed by party A. Reinach 1² from Akoris (Tehne), dated in year 110 B.C., was signed in Greek by party A, the lessee, who acknowledged the lease and promised to abide by it.³ The Tebtunis leases, Cairo 31079,⁴ 30615,⁵ 30613,⁶ and 30614,⁷ all signed by party A, were all addressed by the same lessor to the same lessee between the years 105 and 88 B.C.⁸ There is only one demotic lease known to me which was signed by party B, the one to whom it was addressed. That lease, Reinach 5,⁹ dated in year 106 B.C., was addressed to the same lessor as Reinach 1, but in this case he wrote in Greek his name and "I am satisfied according as it is set forth." Besides being among the few demotic land leases signed by a contracting party, Reinach 1 and 5, Cairo 31079, 30615, and 30613 are furthermore the only ones which bear a registry docket.¹⁰

It is difficult to understand the psychology which, in all cases of party subscription but one, required the party who had the lease written and who was therefore bound by his own words

¹Cf. E. Seidl, Demotische Urkundenlehre nach den frühptolemäischen Texten ("Münchener Beiträge zur Papyrusforschung und Rechtsgeschichte," Heft 27 [München, 1937]), p. 6, n. 5.

²T. Reinach, W. Spiegelberg, and S. de Ricci, Papyrus Th. Reinach: Papyrus grecs et démotiques (Paris, 1905), pp. 175 ff. and Pl. X.

³The lessee and his father had Greek names. On the lessor see ibid., pp. 19 ff. The majority of the contracts to which he was a party are in Greek (ibid., pp. 27 ff.).

⁴Spiegelberg, Die demotischen Denkmäler, II: Die demotischen Papyrus ("Catalogue général ... du Caire," XL [Strassburg, 1906]), Pl. CII.

⁵Ibid., Pl. XXIV.

⁶Ibid., Pl. XXIII.

⁷Ibid., Pl. XXIII. This is in the form of a receipt for rental paid in advance, but also contains a guarantee of usufruct for the advance years.

⁸To these ought to be added, for completeness, the unfinished (!) Cairo 30626 (ibid., Pl. XXXIX) for year 96 B.C. between the same two parties and signed by party A, the lessor.

⁹Reinach, Spiegelberg, and de Ricci, op. cit., pp. 201 ff. and Pl. XIV.

¹⁰The dockets are in Greek, of course. Of the docket of Cairo 30613 only the first four letters of the month, Mecheir, remain.

in the presence of scribe and witnesses to sign it, whereas the other party who was bound to his commitments only vicariously in the words of the first was not required to do so. The signature of the addressor and solely obligated party on other types of contracts, even though it was not considered necessary for the legality of the document, is at least logical, especially if the party addressed whose interests alone it protected was to retain it.¹ On the other hand, it is difficult to see how the addressor of a lease, whether lessor or lessee, who was so tangibly pledged to his commitments whether he actually signed the document or not, can have considered the transaction adequately circumscribed and himself properly protected if the document drawn up from his viewpoint was the only one drawn up and was given to the opposite party. Yet we can be certain that no lease consisted of dual documents, one addressed by each party to the other. First, there is not one instance of preserved dual documents for one such transaction in any period, and not one mention occurs in any available lease of a complementary document made by the other party. Second, although pre-Ptolemaic leases were drawn up by lessor or lessee apparently indiscriminately, in Ptolemaic times all available Fayumic leases were addressed by lessor to lessee,² while oppositely all available Ptolemaic leases originating outside the Fayum³ were addressed by lessee to lessor. This hitherto unobserved fact is too unusual for us to believe for a moment that accident is responsible for the preservation of only one document in every case.

It must be noted in this connection that, although Thompson's translations of and notations on certain passages in the Siut archive dealing with leases and leased land tend to give an erroneous impression of Ptolemaic procedure, as we should expect at Siut the lessee always and only is said to have made the lease. The language of the Siut court proceedings clearly shows also that the lessor did not draw up a complementary document for the lessee. Thompson's translation of B.M. 10591, recto, IV/3

¹Cf. Seidl, op. cit., pp. 6 f.

²There are seven Fayumic leases available to me and complete enough to show this fact.

³Of these there are thirteen complete or nearly complete examples.

and V/5,¹ lrꜣy shn tꜣꜣy dny.t 1/3 hꜣꜣy n Hrgtr as "I (lessor) made a lease of my own one-third share to Heraclides (lessee)," is contrary to the fact that the lease itself, B.M. 10597,² was drawn up by Heraclides. The passages should be translated "I leased my own one-third share to Heraclides." The lr is the auxiliary and shn the infinitive, as is clearly shown, for instance, in B.M. 10591, recto, IV/1, V/4 by lrꜣy (or lrꜣn) shn.tꜣw, "I (or 'we') leased them," the lessor again speaking. Thompson made the same error in translating B.M. 10591, recto, II/6-7, III/25,³ which beginning with the auxiliary wꜣh⁴ should be read: "Tefhape, whom I sue above, had leased the said lands to Heraclides." B.M. 10591, recto, VI/6⁵ should, in like manner, be read: "The one-third share of the lands is that which I (Tefhape) leased to Heraclides."

Thompson's translation of the last clause of B.M. 10591, recto, VI/5⁷ as "without having caused a lease thereof to be given to us (i.e., taken from us)," and his note thereto⁸ give the impression that the demotic is highly idiomatic. Actually the passage is identical with B.M. 10591, recto, V/6, for which Thompson's translation gives the correct idea,⁹ although the scribe omitted the causative dl.t in the latter instance, leaving the demotic impossible. Both were intended to read, as B.M. 10591, recto, VI/5 does: r bn-pꜣf dl.t lrꜣw nꜣn shn r-rꜣw, "he (lessee) not having caused that a lease be made for us concerning them (the lands)."

¹H. Thompson, A Family Archive from Siut (Oxford, 1934), Pls. IV and V, pp. 19 and 21. Hereafter the plate numbers of the columns of B.M. 10591, recto, will not be given, for plate and column numbers coincide.

²Ibid., Pl. XXIX. ³Ibid., pp. 15 and 18, respectively.

⁴Not hr. Cf. the review by B. Gunn, Journal of Egyptian Archaeology, XX (1934), 225, "B, ii 6-7."

⁵Thompson, op. cit., p. 23.

⁶Gunn, op. cit., p. 226. Gunn's emendation of "<ar-s?>" would necessitate just the translation to which he objected, "which I made a lease <concerning it>." He was probably right in supplying a resumptive pronoun, but it should have been the direct object of shn.

⁷Thompson, op. cit., p. 23.

⁸Ibid., n. 102.

⁹Ibid., p. 21.

Thompson's note to B.M. 10591, recto, II/5,¹ misinterprets an issue concerning which the demotic is clear. Chratianch cannot be said on the basis of that passage to have leased to Tuot, her husband, the land of which he had "put her in possession."² The passage, "a lease concerning them (the lands) being made for him (Tuot), their agricultural profit³ being given to him yearly," refers rather to the fact that Tuot leased the lands to cultivators who drew up leases for him and that he received the rental until Tefhape, his half-brother, decided to take possession of his own one-third share independently.

Hence there is not one instance in the Siut proceedings in which a lease is said to have been made by the lessor, but only for him.⁴ It is said only that the lessee made the lease,⁵ and that the lessor leased the lands to him, or that the lessee "plowed them at his (lessor's) bidding."⁶

Whatever Thompson intended by "tender of lease,"⁷ it must not be interpreted to mean a written offer made by a prospective lessee to a landholder of the terms on which he proposed to rent

¹Ibid., p. 15, n. 30.

²Professor Edgerton points out that lwsf mhty n.lm w of B.M. 10591, recto, II/5, is a mistake for lwsf mht n.lmsw of III/24. The clause means either "he (Tuot) being in possession of them (the lands)" or, less probably, "he taking" or "having taken possession of them." If ty were correct it could not be the "absolute pronoun" as Thompson took it, since mh following lwsf can be only infinitive or qualitative. For the form of mht, see W. F. Edgerton, "Obsolescence of the Imperative Mood in Egyptian," Studies Presented to F. Ll. Griffith (London, 1932), p. 66.

³Literally, "excess of cultivator" or "profit from cultivator," meaning the rental not including the taxes.

⁴Contra ibid., p. 23, n. 102, and p. xv.

⁵Add to the instances already cited B.M. 10591, recto, IV/2 and V/4.

⁶B.M. 10591, recto, V/6 and VI/5. "At his bidding" is missing in the first instance. It cannot be argued that by this statement Chratianch was objecting to Tefhape's having let Heraclides plow the land "at his bidding," that is, verbally but without having drawn up for Heraclides a written lease. She was objecting that Heraclides had not drawn up a lease for her and her husband, as the concluding clause of the statement undeniably shows.

⁷Thompson, op. cit., p. 15, n. 30; p. 23, n. 102; p. 72, n. 2.

the latter's land, comparable to the Greek "Pachtangebot,"¹ nor oppositely a "Verpachtungsangebot."² Demotic leases always and only record an accomplished transaction.³ Thompson's further statement that such a "tender" was "accepted by" the lessor⁴ does not at all mean that the lessor wrote another document presenting his acceptance and pledges, nor even that he subscribed the one made for him by the lessee with a statement of his acceptance, as was sometimes done in the case of the Greek "offers."⁵ The only instances of such acceptance among demotic leases are Reinach 5⁶ and an unpublished lease, B.M. 10560,⁷ and they are wholly at variance with the usual practice in this respect. Even so, both of them are full-fledged leases, not accepted offers.

These two documents alone among demotic leases appear to me to have in themselves the minimum requirements of legal instruments adequately binding on both parties. Reinach 5, as has been pointed out, was made by the lessee, signed on the verso by witnesses, registered, and uniquely subscribed and accepted by the lessor. It, indeed, appears extraordinarily ample legally in comparison with the usual demotic lease. B.M. 10560 is from Philadelphia in the Fayum, was made in year fifteen of Epiphanes (190 B.C.), and was drawn up by the lessor, as were all available Fayumic leases. It contains all the stipulations customary in Ptolemaic leases, including a fulsome guarantee by the lessor under penalty that neither he nor any other person could deprive the lessee of the land for the year of the lease. Then the scribe

¹S. Waszynski, Die Bodenpacht (Leipzig, 1905), pp. 13 ff.

²Ibid., pp. 23 ff.

³The leases of royal land studied by Sethe in K. Sethe and J. Partsch, Demotische Urkunden zum ägyptischen Bürgschaftsrechte vorzüglich der Ptolemäerzeit ("Abhandlung der philologisch-historischen Klasse der sächsischen Akademie der Wissenschaften," XXXII[Leipzig, 1920]), Nos. 1-5, are not offers to lease despite the opening formula, "Eat my word of receiving" They are offers of the lessee's pledges and guarantor, for the land had already been "written after" the lessee (cf. ibid., pp. 612 ff.).

⁴Thompson, op. cit., p. 23, n. 102.

⁵Waszynski, op. cit., pp. 20 f. ⁶Cf. p. 2, above.

⁷I have had the use of an excellent photograph of this lease through the kindness of Prof. William F. Edgerton. The photograph derives from Spiegelberg's files, now belonging to Edgerton. It was supplied Spiegelberg by Sir Herbert Thompson.

drew a short line (about so —), as though concluding one part of the document, and continued from that point thus: "B (lessee) above says to A above, 'You have leased to me, etc.'" The land is then summarily described. The lessee promises to pay the rental "according to that which is written above," and to pay it even if he abandoned the land before the year ended. Thereafter, without interruption of the text, the scribe continued, "They, the two persons above, say with one accord," and he recorded their words that all their property, present and future, is guarantee of the lease and that they cannot deny the lease nor claim to have discharged their duties "while the lease above stands between" them and either has claim on the other. The scribe signed as usual and the signatures of twelve witnesses appear on the verso. The papyrus was rolled, tied, and sealed, and a notation was written in one line lengthwise of the roll thus: "[A] lease which A made for B for three arouras of land (of) the domain of Amon {seal} for the crop of year 16."

The contract is, of course, not unilateral at all but bilateral, recording as it does, unlike all other demotic leases, the words of the usually silent party. It is therefore, in and of itself, an impressive and satisfying document, giving protection to both parties. The seal and notation mean at least that it was not to be opened except probably in case of dispute. Including as it does the commitments of both parties, it can hardly have been the proper possession of either party and ought, to our minds, to have been deposited where it was available to both parties.¹

We have no evidence from the demotic leases or any other source that one of the witnesses or any other disinterested person was to take charge of the document in the capacity of *συγγραφοφύλαξ*. B.M. 10560 bears no Greek registry or archive notation, but the absence of such notation may mean exactly that the preserved document was the one deposited.² In fact, the statement that the lease was to be considered in effect so long as it stood between the two parties seems to betray the assumption that the document

¹This is true also, of course, of Reinach 5.

²Cf. Seidl, *op. cit.*, p. 6, n. 4, where what we know about the depositing of a duplicate of demotic contracts in an archive is summed up.

was not to be in the hand of either party. On the other hand, in a number of Ptolemaic Upper Egyptian leases the lessee declares that he cannot say to the lessor that he has paid the rental or, more often, that he has acted in accordance with the lease "while the lease above is in your (lessor's) hand."¹ This statement could appear, of course, only in contracts of a temporary nature such as leases or loans,² and there can be little doubt that the contract in which it appears was handed over to the party addressed.³ Significantly enough, although the leases in which the statement occurs also contain the commitments of the lessor concerning undisturbed usufruct and payment of the taxes in the words of the addressor lessee, nothing whatsoever is said about the manner in which the lessee himself could prove his case and demand the fulfillment of those commitments from a recalcitrant lessor. To be sure, the fact that the document was to be in the hand of the lessor does not at all exclude the possibility that a duplicate was to be deposited in an archive, but the scribes appear to have assumed nothing but a traditio chartae. As an illustration of the strangeness of that assumption, let us take one of the Ptolemaic leases by which the lessee was to be obligated as long as the lease remained in the hand of the lessor, B.M. 10597.⁴ To be sure, Heraclides, the lessee, protected himself by saying that

¹B.M. 10597/13, Thompson, op. cit., Pl. XXIX; B.M. 10230/3, N. Reich, Papyri juristischen Inhalts in hieratischer und demotischer Schrift aus dem British Museum ("Denkschriften der kaiserlichen Akademie der Wissenschaften in Wien, philosophisch-historische Klasse," LV, Abh. 3 [Wien, 1914]), Pls. XV-XVI; Strassburg 9/15-16, Spiegelberg, Die demotischen Papyrus der Strassburger Bibliothek (Strassburg, 1902), Pl. VII; Heidelberg 723/21, Sethe and Partsch, op. cit., Pl. XIX. So also in the lease of a yoke of oxen, Reinach 4/23-24, Reinach, Spiegelberg, and de Ricci, op. cit., Pl. XII, which was signed by party A and registered.

²Cf. Sethe and Partsch, op. cit., p. 123, § 26.

³Cf. Seidl, op. cit., p. 7, and references there.

⁴Thompson, op. cit., Pl. XXIX. Incidentally, inasmuch as the document was found among Tefhape's papers, of which the archive mainly consists, it was presumably never returned to Heraclides, unless Tefhape's copy was returned to Heraclides, and the extant copy was the one deposited with the state but later obtained by Tefhape and kept by him because of its relation to the court proceedings. That supposition would, of course, raise a pertinent question about the disposal of such temporary, deposited documents once the period of their validity was over.

if Tefhape, the lessor, should deprive him of the land, Tefhape would be bound to pay him a fine and still permit him to use the land.¹ The scribe and witnesses could have been relied upon, perhaps, to see that nothing so crude as the drawing up of a lease by one party without the knowledge of the other occurred. Tefhape could not have insisted on a higher rental than that agreed upon without producing the lease unaltered. But, if Heraclides had been deprived of the land and Tefhape had possessed the only copy of the lease and had denied the existence of it altogether, that would, it seems, have decisively put an end to the matter.

In the case of all other transactions such as sales, mortgages, loans, and marriages, the purely unilateral contract was fundamentally sufficient, for the person who had it drawn up was alone obligated in the transaction. In the case of an essentially bilateral transaction such as a division of property, a document was customarily made by each party properly ceding all rights to the property of the others.² Any requirement that such documents had to be registered or that a duplicate had to be deposited in a state archive could have been only a juristic development, a refinement, but not inherently necessary for the protection of the parties concerned. There is, however, no apparent answer to the question why, if the transaction involved in leasing land needed to be reduced to writing at all, it should not have appeared necessary for each party to be protected by a document from the other. On the other hand, I cannot see how the bilateral transaction couched in unilateral form and with traditio chartae apparently assumed can have been considered adequate in the beginning by the most elementary standards unless the document were placed in the hands of the state or some other responsible person in duplicate or through certified recording.

¹Ibid., lines 15-16.

²Cf., for instance, the division of property from year seventeen of Euergetes I, of which Berlin 3089, Spiegelberg, Demotische Papyrus aus den königlichen Museen zu Berlin (Leipzig, 1902), Pl. IV and p. 6, is the declaration of one party and a British Museum papyrus, Revillout, "Hypothèque légale de la femme et donations entre époux," Revue égyptologique, I (1880), 135, n. 1, and Pl. 8 thereto, is the declaration of the other party.

